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No. 94-502

In the Supreme Court of the United States

OCTOBER TERM, 1994

MARWAN AFANEH, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends that the court of appeals erred in reversing an order suppressing statements obtained following his arrest.

1. On June 3, 1993, petitioner was indicted by a grand jury sitting in the United States District Court for the Northern District of Ohio. He was charged in two counts with being a felon in possession of a firearm, in violation of 18 U.S.C. 922(g)(1).

In early 1993, the Cleveland police obtained warrants to search the store that petitioner managed and 24 other stores for firearms and for various items used in food stamp fraud. The officers executing the warrants were instructed to arrest all employees at each store. As soon as they entered his store, the officers arrested

petitioner for food stamp trafficking. When the officers asked petitioner whether any weapons were in the store, he informed them of the location of two loaded revolvers that he said belonged to the previous owners of the store. The officers seized the revolvers, as well as other items, and took petitioner to jail.

Petitioner moved to suppress the statements that he made to the officers and the revolvers they seized. On August 26, 1993, the district court suppressed the statements on the ground that the officers did not have probable cause to arrest petitioner, because the officers failed to articulate a reason to believe that everyone working at the store was involved in food stamp trafficking. The court did not suppress the guns, however. Pet. App. A12-A18.

The court of appeals reversed. Pet. App. A1-A10. Although the court concluded that the government did not have probable cause to arrest petitioner, the court held that the officers were justified both in detaining petitioner during the execution of the search warrant and in questioning him about any guns that might be in the store.

2. Petitioner contends (Pet. 9-15) that, unlike the detention permitted during the execution of a search warrant in *Michigan* v. *Summers*, 452 U.S. 692 (1981), the statements obtained in this case resulted from an illegal arrest before the search warrant was executed. Whatever the merits of petitioner's contentions, they are not presently ripe for review by this Court. The court of appeals' decision places petitioner in precisely the same position he would have occupied if the district court had denied his motion to suppress. If petitioner is acquitted following a trial on the merits, his contentions will be moot. If, on the other hand, petitioner is convicted and his conviction is affirmed on appeal, he will

then be able to present his contentions to this Court, together with any other claims he may have, in a petition for a writ of certiorari seeking review of a final judgment against him. Accordingly, review by this Court of the court of appeals' decision would be premature at this time.*

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

DREW S. DAYS, III
Solicitor General

OCTOBER 1994

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* Because this case is interlocutory, we are not responding on the merits to the question presented by the petition. We will file a response on the merits if the court requests.